

Date of decision: 10.4.96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(10.4.96)

Mr. J. T. Trivedi for the petitioners
Mr. P. G. Desai for the respondents

C.A.V. JUDGMENT:

Heard the learned counsel for the parties.

The petitioners who are working on the post of helper in the respondent Corporation filed the present petition for direction to the respondents to promote the petitioners to the post of Process Servers, which posts be ordered to be created with retrospective effect from the date the petitioners became eligible for promotion as such. Further directions for giving consequential benefits like difference of pay, allowances, etc ., have also been prayed for.

2. It is not in dispute that the post of helpers in the Corporation are Class IV posts in the pay-scale of Rs.196-230. By notification dated 3rd April, 1980 issued by the Revenue Department, Government of Gujarat, Process Server (Class III) Recruitment Rules, 1980 have been framed under Article 309 of the Constitution of India. The aforesaid Rules provide that appointment to the post of Process Server (Class III) (Isolated cadre) in the Land Records Department shall be made by promotion from amongst the persons of proved merit and efficiency working as Class IV servants in the Land Records Department in a district, who have put in at least three years" service on their post. Eligibility for promotion has been provided under Rule 3 of the Rules, 1980, according to which a candidate must have passed VII the standard examination, and must be physically fit and suitable for the post. On the basis of that notification what the petitioners are praying is that the respondent Corporation may be directed to frame rules for promotion to the post of Process Server.

3. It is the case of the respondent Corporation that the post of Process Server is not their in the Corporation. Creation of post is the prerogative of the Executive. It is also settled law that sitting under Article 226 of the Constitution of India this Court cannot issue writ of mandamus to the Corporation to frame rules or regulations of service conditions. It is absolutely the prerogative of the Corporation to provide for promotions etc., from particular cadre or category of post, and not for this Court to direct it to legislate on such matters.

4. The question whether the petitioners have sufficient channel of promotion or not in their service is altogether the concern of the respondent Corporation and not for this Court. Merely because in the Revenue Department of the Government of Gujarat rules have been framed for filling up the post of Process Servers to offer promotion to class IV employees that ipso facto does not give any right to the petitioner to claim promotion. The post of process server has to be created and rules have to be framed regulating

recruitment thereon, which is the function of the Corporation. Promotion is a mode of recruitment. Unless it is provided in some set of statutory rules or regulations, promotion cannot be claimed as a matter of right. It is not the case of the petitioners that the higher post of Process Server is there in the Corporation and the channel of promotion to that post is provided from the cadre of helper. In view of these facts the prayer for issue of a writ of mandamus to the respondents to promote the petitioners to the post of process server cannot be allowed.

5. The petitioners prayed that the Corporation may firstly be directed to create the posts of process servers with retrospective effect and then give promotion to the petitioners. Both are not permissible sitting under Article 226 of the Constitution of India. Reference in this regard may be made to the decision of the Supreme Court in the case of U.P. State Tourism Development Corporation Ltd. vs. I.B. Misra, JT 1995(1) SC 565.

6. Learned counsel for the petitioners contended that the petitioners re doing the same work which are being done by the process servers in the Revenue Department of the Government of Gujarat, and as such they are entitled for the pay in the pay-scale of process server on the parity of equal pay for equal work. This contention of the learned counsel for the petitioners cannot be accepted for two reasons. Firstly, the petitioners themselves have considered the post of helper lower in the status than the post of process server. In other words, two fold prayer has been made - one for creation of the post of process server with retrospective effect and secondly, the claim of the petitioners on the basis of equal pay for equal work -which is too difficult to accept in the present petition. It is settled position of law as laid down by the Supreme Court in the case of Shyam Babu Verma vs. Union of India, reported in 1994(2) SCC 521, that the nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies the classification. The principle of 'equal pay for equal work' should not be applied in mechanical or casual manner. In the facts of the present case, the posts of helper are in class IV and the posts of process server are in class III with different pay-scales, and there is no scope for applying the principle of equal pay for equal work.

7. When the learned counsel for the petitioner was asked by the court as to what are the qualification prescribed for appointment to the post of helper, he failed to give any reply to the same. It is not the case of the petitioners that the qualification for appointment to the

post of helper is the same as it has been prescribed for the post of process server. Otherwise also, it cannot be so because the post of process server is to be filled in by promotion from the category of class IV servants who have put in atleast three years' service which cannot be in the case of helpers whose appointment is made by direct recruitment. Here is the case where promotion is given to those possessing minimum standard of education i.e. VII standard with experience of three years. Some of the petitioners might have passed S.S.C. examination or VIITH standard, but that does not give them any entitlement for the pay-scale of the post of process server. The principle of equal pay for equal work is enforceable by this court only if the persons claiming that satisfy that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat the equals unequally. Unless a very clear case is made out and the court is satisfied that the scale provided to two groups of persons, on the basis of material produced before it, amounts to discrimination without there being any justification, the court should not take upon itself the responsibility of re-fixation of scales of pay fixed by the Pay Commission after examination of all the relevant materials. These are the observations which have been made by the Apex Court in the case of State of West Bengal vs. Hari Narayan Bhowal, reported in 1994(4) SCC 78.

8. The petitioners are claiming equal pay for equal work on the ground that they are doing the the similar work which is being done by the process servers in the Revenue Department. As stated earlier, the post of helper is class IV post whereas the post of process server is class III post and it is a promotional post. The learned counsel for the respondent Corporation has stated that the petitioners are not doing the work of process servers. Processes are being prepared by clerks and the same are also being served by the clerks. The petitioners are only helpers who are attached to the surveyors doing the work of demarcation in connection of implementation of the town planning scheme. The very nature of designation 'helper' indicates that they have to help the surveyors who undertake the work of survey.

9. No case is made out for interference by this Court. The claim of the petitioners for equal pay for equal work on the basis of the material which has been produced and the averments made in the writ petition, coupled with other facts as noticed above, is difficult to accept.

10. In the result this writ petition fails and the same is dismissed. Rule discharged. No order as to costs.